

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTINE EVES

Claimant

VS.

KIT MANUFACTURING COMPANY

Respondent

Self-Insured

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Docket No. 201,463

ORDER

Claimant appeals a Preliminary Hearing Order entered by Administrative Law Judge George R. Robertson, dated July 17, 1995.

ISSUES

Claimant requests Appeals Board review of the following issues:

- (1) Whether claimant's upper extremity injuries are a result of a series of accidents that arose out of and in the course of her employment with the respondent; and
- (2) Whether claimant gave timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both of the issues raised by the claimant are jurisdictional and subject to review by the Appeals Board. See K.S.A. 44-534a(a)(2).

- (1) Claimant alleged work-related accidental injuries to her back, neck, hip and upper extremities. The back, neck and hip injuries are claimed to have occurred in February of 1994. The upper extremity injuries are alleged to have occurred due to the claimant's repetitive work activities, from December 1994 through March 6, 1995, the last day claimant worked prior to right carpal tunnel release surgery on March 30, 1995. Preliminary hearing benefits of future medical treatment, payment of past medical expenses and temporary total disability weekly benefits are requested by the claimant.

The Administrative Law Judge found claimant had suffered a work-related back injury and timely notice of the accident was given. He then granted claimant's request for medical treatment and payment of past medical expenses for the lumbar region of the claimant's back only. The Administrative Law Judge specifically found that claimant's right carpal tunnel condition, which had been surgically released by the date of the preliminary hearing, was not work related.

The Appeals Board disagrees with the Administrative Law Judge and finds that the evidence in the preliminary hearing record established by claimant's testimony and the medical records admitted therein, does prove that it is more probably true than not that the claimant's right carpal tunnel syndrome and left wrist symptoms are work related. Claimant testified that beginning in January 1995, her hands went numb, pain would radiate down her arms and she had pain when she would grab things. Claimant's job consisted of cutting strips of wood from bundles weighing up to forty (40) pounds repetitively using her hands. Claimant saw Dr. Michael Grant, Dr. James Neumann and Dr. David Peterson for her upper extremity complaints. All of these physicians' medical records give a history of claimant's repetitive work activities contemporaneous with claimant's upper extremity symptoms.

(2) The current notice statute contained in the Kansas Workers Compensation Act makes it a strict requirement that the employer be given notice of an accidental injury within ten (10) days unless just cause can be established by the claimant. If just cause is established, the employee then has seventy-five (75) days from the date of accident to provide notice. See K.S.A. 44-520.

In the instant case, the claimant signed an Employee Leave Form on March 10, 1995 which indicated she was being requested by her doctor to be off work until March 30, 1995 for treatment of neck and hip problems. Claimant testified that she told Dana Walker, her assistant foreman, and Marla Pickler, Human Resource Manager for the respondent, about her neck and back injuries but did not mention her injuries to her arms. Marla Pickler also testified that she was aware of claimant's back injury but claimant never mentioned, and she never heard of, any problems in reference to claimant's hands.

The Appeals Board finds that the preliminary hearing record is completely void of any evidence that claimant notified the respondent that her work activities had caused injury to her upper extremities. Claimant did not give notice within ten (10) days and has not established just cause for failure to give such notice. Accordingly, the Appeals Board affirms the Administrative Law Judge's Preliminary Hearing Order that denied claimant's claim for preliminary benefits on the basis that claimant failed to give timely notice of her accidental injury to her upper extremities.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge George R. Robertson, dated July 17, 1995, that denied claimant benefits for her upper extremity injuries, should be, and the same is hereby, affirmed, as claimant failed to give timely notice as required by K.S.A. 44-520.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, Kansas
 Edward D. Heath, Jr., Wichita, Kansas
 George R. Robertson, Administrative Law Judge
 Philip S. Harness, Director